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Supreme Court, U.S.
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No. 94-0282

In The

Supreme Court of the United States

October Term, 1994

DARREYL M. YOUNG,

Petitioner,

v.

THE NORTHERN ILLINOIS CONFERENCE OF UNITED METHODIST CHURCH, THE BOARD OF ORDAINED MINISTRY, and R. SHELDON DUECKER, as the Presiding Bishop of the BOARD OF ORDAINED MINISTRY,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITIONER'S REPLY TO THE BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

P. JANE RUTHERFORD
Counsel of Record
DePaul Univ. College of Law
25 E. Jackson Blvd.
Chicago, IL 60604
(312) 362-5269

TIMOTHY P. O'NEILL
The John Marshall Law School
315 S. Plymouth Court
Chicago, IL 60604
(312) 987-2367

Attorneys for Petitioner

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OR CALL COLLECT (402) 342-2831

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The Respondent discriminated against the Petitioner on the basis of sex and race. It also violated the terms of her employment contract. The Respondent does not contest either of these facts. Instead, the Respondent relies on its religious nature to shield it from accountability.

Similarly, the Respondent does not deny that *certiorari* is appropriate; instead it argues the merits of the case. For example, the Respondent does not challenge either the quantity or importance of the employment cases filed against religious institutions or that the Supreme Court is repeatedly troubled with petitions for certiorari in these cases. Nor does the Respondent dispute that the Seventh Circuit failed to follow binding Supreme Court precedent in *Employment Division v. Smith.* Finally, the Respondent admits that a conflict exists in the Circuits over whether courts can resolve contract disputes between clergy and their churches using neutral principles of contract law. Therefore, the reasons for granting *certiorari* go unchallenged.

Accordingly, this Reply addresses only the new points Respondent raises: (1) the existence of authority for clergy discrimination suits, (2) the Religious Freedom Restoration Act ("RFRA")[1] as a bar to this action, and (3) Respondent's quibbles with the pleading of the contract claim.

Although the Respondent admits that the majority of courts permit employment discrimination suits against religions, Respondent states that courts "*never* hear" clergy claims; that "all" cases that permit discrimination suits against churches "involve the rights of *non-ministerial* employees"; and that "*every* circuit and district court . . . has decided the issue adversely to Petitioner's position." (Resp. p. 5-6). Respondent goes so far as to say that "Petitioner cannot point to a single case upholding such an action by a clergy person." (Resp. p. 6).

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[1] 42 U.S.C. § 2000bb *et seq.*

In fact, however, the first case cited in the Petition's Table of Authorities holds that a court may consider a pastor's discrimination claim. *Black v. Snyder*, 471 N.W.2d 715 (Minn.App. 1991) (Pet. p. iii; p. 5, n. 1).[2] In *Black*, a Lutheran associate pastor filed a sex discrimination suit alleging sexual harassment. In holding that a court could consider the pastor's discrimination claim, the court noted that it was merely applying a neutral law of general application, as required by *Employment Division v. Smith*, 494 U.S. 872 (1990). *Black v. Snyder*, 471 N.W.2d at 718.

Most of the cases cited by the Respondent to the contrary predate this Court's opinion in *Smith*. Neither of the two post-*Smith* cases Respondent cites[3] even mention *Smith*, let alone consider its impact on race discrimination claims against religious institutions. The Seventh Circuit failed to follow binding Supreme Court precedent when it refused to apply the neutral generally applicable provisions of Title VII to this claim of sex and race discrimination.

Respondent's sole response is to state that *Smith* has been undercut by RFRA. RFRA does not prohibit the government from enacting neutral laws of general applicability that intrude on religion; it merely requires a "compelling government interest" for doing so.[4]

This Court repeatedly has held that the government has a compelling state interest in eradicating racial discrimination. *See, e.g., Shaw v. Reno*, 113 S.Ct. 2816 (1993); *Crawford v. Board of Education*, 458 U.S. 527 (1982); *Fullilove v. Klutznick*, 448 U.S. 448, 496 (J. Powell concurring

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[2] This state court's interpretation of the federal constitution is "entitled to consideration along with those of federal courts." *Caspari v. Bohlen*, 114 S.Ct. 948, 956 (1994).

[3] *DeMarco v. Holy Cross High School*, 4 F.3d 166 (2d Cir. 1993); and *Scharon v. St. Luke's Episcopal Presbyterian Hospitals*, 929 F.2d 360 (8th Cir. 1991).

[4] 42 U.S.C. § 2000bb *et seq.*

1980); *United States v. Paradise*, 480 U.S. 149 (1987); and *Metro Broadcasting, Inc. v. Federal Communications Commission*, 497 U.S. 547 (1990). The Court has upheld such a compelling state interest even when it intrudes on the first amendment rights of religious freedom. *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983).

Indeed, Congressional power to dismantle race discrimination is conferred by the fourteenth amendment.[5] Consequently, it is not only a compelling state interest, but one provided for in the constitution itself. Therefore, the Court frequently has given deference to Congressional efforts to eliminate race discrimination. *Metro Broadcasting, Inc. v. Federal Communications Commission*, 497 U.S. 547 (1990); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 490 (1989); *Fullilove v. Klutznick*, 448 U.S. 448 (1980).

Congress specifically decided to prohibit religious institutions from discriminating on the basis of sex or race when it carved out a narrow exception to Title VII for religious discrimination.[6] This conscious decision to apply Title VII to religious entities distinguishes Title VII claims from the age discrimination cases cited by Respondent[7] because it is less clear that Congress intended age discrimination laws to apply to churches. *DeMarco v. Holy Cross High School*, 4 F.3d 166, 169 (2d Cir. 1993). Because Congress intended religious entities to be bound by Title VII, it falls within the exception created by *NLRB v. Catholic Bishop*, 440 U.S. 490 (1979) that enables courts to consider neutral employment laws that are intended to apply to churches.

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[5] U.S. Const. amend. XIV, § 5.

[6] 42 U.S.C. § 2000e-1(a).

[7] *DeMarco v. Holy Cross High School*, 4 F.3d 166 (2d Cir. 1993); *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354 (D.C. Cir. 1990).

The protection provided by RFRA is narrower than that provided by the first amendment. RFRA provides that "Government shall not substantially burden a *person's* exercise of religion. . . . "[8] In contrast, the first amendment prohibits laws "respecting an establishment of religion, or prohibiting the free exercise thereof. . . . "[9] Therefore, RFRA protects only individual rights of free exercise, while the first amendment might be construed to create rights in institutional religion.[10] This interpretation of the relevant language is consistent with this Court's construction of the word "person" in other contexts. For example, in construing the fourteenth amendment, this Court has held that the use of the word "person" confers individual, not class or group rights. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989). Similarly, the use of the word "person" in RFRA protects individuals, not institutions.

The individual who needs protection of her free exercise rights is the Petitioner. When courts exclude clergy from the protections provided by Congress, they place an undue burden on the free exercise right to pursue a career in the ministry. Refusal to apply these laws to clergy denies them equal protection of the law.

Respondent does not deny that a contract dispute exists or that such a dispute could be resolved with

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[8] 42 U.S.C. § 2000bb (emphasis added).

[9] U.S. Const. amend. I.

[10] For arguments that the first amendment provides religious group rights *see* Douglas Laycock, *Towards a General Theory of the Religion Clauses: The Case of the Church Labor Relations and the Right to Church Autonomy*, 81 Colum. L. Rev. 1371 (1981); and Frederick Mark Gedicks, *Toward a Constitutional Jurisprudence of Religious Group Rights*, 1989 Wis. L. Rev. 99. *But see* Ira C. Lupu, *Free Exercise Exemption and Religious Institutions: The Case of Employment Discrimination*, 67 B.U. L. Rev. 391 (1987); and Ira C. Lupu, *Keeping the Faith: Religion, Equality and Speech in the U.S. Constitution*, 18 Conn. L. Rev. 739 (1986) (arguing that first amendment free exercise rights are individual rights).

neutral principles of contract law without intruding on religious freedom. Instead, the Respondent's sole response to the Petitioner's neutral contract claim is to assert that it was not sufficiently well pleaded. Respondent bickers about the wording of the complaint. Nevertheless, it is well settled that pleading is not a mere game of words: "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Conley v. Gibson*, 355 U.S. 41, 48 (1957).

The complaint was not dismissed by the district court because it was not well pleaded, but because the court believed that the first amendment barred it from considering the case at all. That issue is appropriately before this Court because there is a conflict among the circuits over whether courts can use neutral contract principles to resolve contract disputes between clergy and religious institutions. *See, e.g., Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354 (D.C. Cir. 1990) and *Natal v. Christian and Missionary Alliance*, 772 F.2d 1164 (4th Cir. 1985).

This Court should grant *certiorari* because this case raises important constitutional issues that recur frequently and have generated a split in the Circuits.

Respectfully submitted,

P. JANE RUTHERFORD
Counsel for Petitioner
25 E. Jackson Blvd.
Chicago, IL 60604
(312) 362-5269